which brings in $21 a month must be worth more than $500.

In the next case, the appellant, the registered proprietor of certain premises, obtained an order for possession of the said premises and payment by the defendant of mesne profits. At the date of the commencement of the proceedings the total amount of mesne profits was something like $900. According to Thomson C.J. (as he then was) the claim for possession is ancillary to the claim for mesne profits, and in assessing the amount or value of the subject-matter it is necessary to take into account mesne profits. He based this view on the decision of the Privy Council case of *Mohideen Hadjiar* v. *Pitchey*,[3] read in the light of what was said by Sir Montague Smith in the case of *Bank of New South Wales* v. *William Owston*.[4] His Lordship however added that "if these reasons be not well-founded", it is for the party who alleges that the case falls within one of the exceptions set out in section 37 of the Ordinance (now section 68(1) of the Courts of Judicature Act), to show something that has been either proved or has been admitted or is capable of showing that the allegation of fact on which his objection rests is made out. In that case, his Lordship held that there was no evidence, apart from the mesne profits, that the value of the relief asked for, that is, the possession claimed, is less than $500.

In the instant case, there is no question of taking into account the mesne profits as these were claimed only as from the day of judgment. It was for the respondent to show from the evidence if the value of the landlord's possession of the premises was less than $500. All he did was to show that the rent was $32 a month. With this evidence, and relying on the second proviso to the 1957 Rule 1, he sought to establish that its value was less than $500. This, as I have indicated, is not the correct approach. On the other hand, there is evidence that for twenty years the respondent had been denied the use of his own premises which he now requires for the expansion of his business in hardware, building materials and estate supplies. The value of such a possession would certainly be more than $500.

The objection therefore fails, and I shall now hear the other grounds of objection.

Order accordingly.

ANGLO-ORIENTAL PLANTATIONS LTD. v. D'CRUZ

[O.C.J. (Ismail Khan J.) August 27, 1966]

[Seremban — Civil Suit No. 85 of 1966]

Master and Servant — Occupation by servant of premises for more effective performance of his duties as such servant — Dismissal of servant — Whether servant has right to continue to occupy premises — Pending dispute before industrial court

The defendant was in occupation of a bungalow belonging to the plaintiffs which he occupied for the more effective performance of his duties as Chief Clerk. He was dismissed by the plaintiffs and he was asked to vacate the premises. The plaintiffs asked for an order that the defendant do quit and vacate the premises. The defendant contended that the termination of services was contrary to the agreed procedure and that the dispute regarding this matter was before the industrial court.

Held: (1) where a person occupied premises as a servant of the owner for the more effective performance of his duties as such servant and he is dismissed, he has no right to continue to occupy the premises;

(2) even if it is decided that his dismissal was wrongful, this being a contract for personal services, the court would not enforce specific performance of the contract to employ him and the defendant would only be entitled to damages, including compensation for loss of the use of the bungalow;

(3) therefore there must be an order in favour of the plaintiffs.

Cases referred to:—

(1) *Janisse* v. *Livesey* [1944] 4 D.L.R. 73.

(2) *Collison* v. *Warren* [1901] 1 Ch. 812 at p. 817.

(3) *Canadian Pacific Railway* v. *Gaud & Ors.* [1949] 2 K.B. 239 at p. 241.

(4) *Thomson* v. *Park* [1944] K.B. 408 at p. 409.

(5) *Kamuning (Perak) Rubber & Tin Co. Ltd.* v. *Abraham* [1965] 1 M.L.J. 20.

CIVIL SUIT.

Wong Seng Chow for the plaintiff.

E. V. Devadason for the defendant.

Cur. Adv. Vult.

Ismail Khan J.: The plaintiffs are a limited company and are the owners of a bungalow situated on Lot No. 3303/3309 Grant No. 1712 in the mukim of Rantau, district of Seremban, in Seremban Estate.

The defendant was employed by the plaintiffs as a chief clerk on the said estate and was in occupation of the said bungalow free of rent.

On 27th June, 1966, the plaintiffs commenced this action against the defendant praying for judgment for:—

(i) An order that the defendant and all persons holding through or under him do quit and vacate the bungalow now occupied by him forthwith or in the alternative;

(ii) For an injunction restraining the defendant and all persons holding through or under him from remaining in or upon the said bungalow;

(iii) For damages in respect of the unlawful occupation of the said bungalow by the defendant from the 3rd day of September 1965 up to the date when vacant possession of the said bungalow is given;

(iv) Costs of this action; and

(v) Such further and other relief as may be just.

The circumstances which led to this action are as follows. The defendant was in occupation of the said bungalow for the more effective performance of his duties as chief clerk. On 3rd

September, 1965, his services were terminated by the plaintiffs, and the plaintiffs gave notice to the defendant to hand over the bungalow and vacate the same.

In this application made by way of motion the plaintiffs ask for an order that the defendant and all persons holding through or under him may be restrained until the trial of this action from remaining in or upon the said bungalow.

The ground for such an application is that the continued occupation by the defendant of the said bungalow is causing irreparable inconvenience and damage to the plaintiffs, preventing them from installing another employee in the bungalow, and that meanwhile the defendant is utilising the furnishings and fittings in the bungalow belonging to the plaintiffs, and that this situation would continue unless the defendant is ordered to vacate the bungalow.

Counsel for the plaintiffs cited several authorities in support of the proposition that where the occupation of premises by a person is as a servant of the owner for the more effective performance of his duties as such servant and that person is dismissed from his employment, he has no right to continue to occupy the premises, and that an injunction would be granted to prevent him from so doing even though he may have an action for wrongful dismissal. (See *Janisse* v. *Livesey* [1]; *Collison* v. *Warren* [2]; *Canadian Pacific Railway* v. *Gaud & Ors.* [3]; *Thomson* v. *Park* [4]; *Kamuning (Perak) Rubber & Tin Co. Ltd.* v. *Abraham.* [5]

In his affidavit in reply, the defendant stated that the termination of his services did not conform with the procedure agreed to under the agreement of procedures for dealing with disputes, inefficiency and redundancy dated the 27th day of April, 1965 between the All Malayan Estates Staff Union (hereinafter called the said union) and the Malayan Planting Industries Employers Association (hereinafter called the said association). He stated that the dispute between the said union and the said association arising out of the circumstances of the alleged termination of his services had then been referred to the industrial court under section 4 of the Industrial Courts Ordinance, 1948, in accordance with the agreement relating to disputes on interpretation entered into between the said union and the said association dated the 27th day of April, 1965. He then said that the action against him was premature since the matter of his dismissal was before the industrial court. He further alleged that his continued occupation of the bungalow was not unlawful until the issue of his dismissal had been decided by the industrial court.

In my view, this is not an answer to the plaintiff's claim for the interlocutory relief. It is clear from the authorities cited that where a workman is dismissed he is not entitled to remain in possession of a house which he occupied by reason of his work. Even if it is decided in the end that his dismissal is wrongful, this being a contract for personal service, the court will not enforce specific performance of the contract to employ him. The defendant would then be entitled to damages which would include compensation for the loss of the use of the bungalow which he would have retained, if his employers had not broken their contract. In this case, the plaintiffs are prepared to give an undertaking as to such damages. In my opinion, this is a case where the plaintiffs should be granted the interlocutory relief asked for.

There will be an order in terms of the motion and costs.

Order in terms.

Solicitor: *Shearn, Delamore & Co.; P. G. Lim.*

TAY BOO JIANG v. CHAN YIP TONG

[O.C.J. (Winslow J.) August 27, 1966]

[Singapore — Suit No. 843 of 1964]

Tort — False imprisonment — Malicious prosecution — Arrest by police — Sanction to prosecute given by Attorney-General.

The plaintiff claimed damages for false imprisonment and malicious prosecution. The allegation was that as a result of a report to the police made by the defendant the plaintiff was arrested and detained by the police. Further the defendant had made a complaint to a magistrate that the plaintiff had given false evidence in a civil case and the defendant was charged with perjury, sanction for the prosecution having been given by the Attorney-General.

Held: (1) the defendant in this case did not authorise the arrest of the plaintiff nor did he make any charge on which it became the duty of the police to act. The police acted on their own initiative in arresting the defendant and on the facts of the case their action was lawful;

(2) the defendant was not prompted by malice in making his complaint to the magistrate and as the Attorney-General had granted a sanction for the prosecution of the defendant there could not be said to be an absence of reasonable and probable cause on the part of the defendant in setting the law in motion.

Cases referred to:—

(1) *Tan Kay Teck & Anor.* v. *Attorney-General* [1957] M.L.J. 237.

(2) *Bradshaw* v. *Waterlow and Sons Ltd.* [1915] 3 K.B. 527.

CIVIL SUIT.

C. F. J. Ess for the plaintiff.

L. A. J. Smith (*V. K. S. Narayanan* with him) for the defendant.